



ITW

85025AEK
Customer No. 01333

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Lelia Cosimbescu, et al

GREEN ORGANIC LIGHT-
EMITTING DIODES

Serial No. 10/662,272

Filed 15 September 2003

Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22313-1450
Mail Stop Petitions

Sir:

Group Art Unit: 1774

Examiner: Dawn L. Garrett

I hereby certify that this correspondence is being
deposited today with the United States Postal
Service as first class mail in an envelope addressed
to Commissioner For Patents, P.O. Box 1450,
Alexandria, VA 22313-1450.

Deidra L. Mack
Deidra L. Mack

December 9, 2005
Date

PETITION TRANSMITTAL

Enclosed herewith is Applicants' Petition for the above-identified
application.

The Commissioner is hereby authorized to charge the required fee
to Eastman Kodak Company Deposit Account 05-0225. **A duplicate copy of this
letter is enclosed.**

Respectfully submitted,

Attorney for Applicant(s)
Registration No. 25,518

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Facsimile: 585-477-1148

If the Examiner is unable to reach the Applicant(s) Attorney at the telephone number provided, the
Examiner is requested to communicate with Eastman Kodak Company Patent Operations at
(585) 477-4656.



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PETITION TO COMMISSIONER FOR PATENTS

Applicants hereby petition the Commissioner for Patents to withdraw the final status of the Final Rejection and to direct the Examiner to allow entry of the outstanding Response Under Rule 116 and consideration of the Second Declaration Under Rule 131 dated November 14, 2005.

This petition is related to a Final Rejection dated October 6, 2005 and particularly to an Advisory Action dated November 29, 2005, in which the Examiner refused to act on the Response Under Rule 116 and refused to consider a Declaration Under Rule 131. This petition is being filed because, although several phone messages were traded, the Examiner has declined to receive any phone call from Applicants' attorney to discuss the merits of this request.

Applicants' attorney believes that patent procurement costs including those of an RCE have become quite substantial and that the common sense approach to patent examination that used to exist has been lost. In the present application a 131 Declaration had been submitted on August 2, 2005. The Examiner responded in her Final Rejection that the Declaration did not relate to the particular species that had been elected but to a second species identified and

claimed in the application. Applicants then submitted the subject Response Under Rule 116 and a Second Declaration covering the elected first species. The Response Under Rule 116 did not amend any claims - it only corrected the status designation of three claims. As part of the submission it was explained in writing that the fact that the earlier submission related to the non-elected species was an inadvertent error and promptly corrected by the subsequent submission. This was not a situation where the attorney strategically decided not to submit a Declaration or a situation where the attorney tried to avoid the work of preparing and submitting the Declaration. It was a simple inadvertence. The inadvertence was readily corrected. Had the Examiner telephoned Applicants' attorney, the correct Declaration could have been submitted immediately and the case disposed of. It is also important to note that the first Declaration submitted is still relevant since the next step would be consideration of the generic claims for which the date of invention of the second species is relevant. The foregoing summarizes the common sense equity of the situation and why the petition should be granted. The government has a monopoly on administration of the patent system and the Rules need always to be applied to assist the Applicants where practical.

Turning to the applicable rules, 37 CFR 1.116(e) and MPEP appear pertinent. That paragraph provides that a Declaration "...may be admitted upon a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented." In view of the Examiner's declining to discuss the matter, Applicants' attorney is not aware of the reasons for not admitting the Declaration.

Applicants' attorney believes that the necessity is clear since the outstanding rejection is premised on the fact that the first Declaration covered the wrong species. The Second Declaration is necessary to antedate the elected species. The second requirement is that there must be good and sufficient reasons why the Declaration was not earlier presented. The rule does not ask for justification as to why the Declaration "could not have been earlier presented"; it asks for reasons why it was not earlier presented. In this respect, Applicants' attorney believes that the following excerpt from the Response Under Rule 116 satisfies this requirement:

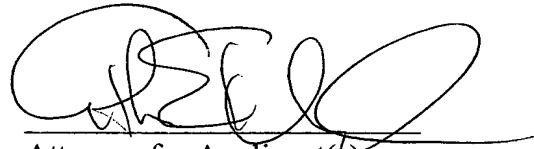
"Applicants apologize for having submitted Rule 131 Declaration data within the scope of the generic claims but not within the claims directed to the elected species. This was an oversight."

"Submission of the data concerning quinacridone reduction to practice with the prior response was and is relevant to the generic invention but was inadvertently submitted rather than the data more relevant to the elected species of the second Declaration."

It is believed that Applicants have satisfied the "good and sufficient" requirements intended by the Rules. It is clear that neither strategy nor lack of effort were reasons for not submitting the correct Declaration and that common sense and a desire to advance prosecution should have prevailed.

In view of the foregoing, it is requested that the Commissioner grant this petition to withdraw the final status of the Final Rejection and direct the Examiner to allow entry of the outstanding Response Under Rule 116 and consideration of the Second Declaration Under Rule 131 dated November 14, 2005. A prompt decision is requested by January 6, 2006 to avoid the accrual of extension fees pending a decision on this petition.

Respectfully submitted,



Attorney for Applicant(s)
Registration No. 25,518

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